August 16, 2004

S. Kimberly Belshé
Secretary
State of California
Health and Human Services Agency

**RE: California Performance Review (CPR) of Health and Human Services Recommendations HHS 23**

Dear Secretary Belshé:

Thank you for the opportunity to comment of the CPR recommendations for the Health and Human Services agency. The concepts contained in the California Performance Review (CPR) with respect to the reorganization of state government and government services require more comprehensive review than we have been able perform in the short time since the CPR was made available. It is clear that many of the CPR proposals contain cross-cutting issues that impact Health and Human Services and that deserve serious consideraton.

The changes being proposed are both a realignment of services and an elimination of structures, agencies, boards and a large number of employees who work in these structures, agencies and boards. Although we recognize the enormous undertaking that the CPR represents there are inconsistencies in the report that would make it impossible to evaluate some aspects of the recommendations, even if we had been given additional time.

For example, on page 12 of "Form Follows Function" the report states,

> *"To implement theses strategic goals, the Health and Human Services Department should be composed of the following seven entities: the Office of the Secretary, the Center for Health Purchasing, the Center for Public Health, the Center for Behavioral Health, the Center for Services to the Disabled, the Center for Social Services and the Center for Finance and Supportive Services."*

Exhibit 3 on page 13 purports to be a diagram of the "Proposed Health & Human Services Department" but there are **nine** entities pictured in the diagram

including a Quality Assurance Division which is not even mentioned as being one of the seven entities identified on page 12. Since the current DHS Licensing and Certification functions and the professional licensing boards are identified as being subsumed under this entity, its absence from the summary report language is part of the reason that careful review and a fully considered response to the CPR Health and Human Services proposal by CNA is not possible. Many clarifications need to be made in a forum that allows for questions and the open exchange of ideas. The upcoming hearing are a good start but a great deal of additional time is needed to clarify the intent of the CPR changes.

Both the advocacy community and the government will benefit from this opportunity to have questions answered since more may be read into the CPR than was intended.

CNA is providing focused input into HHS 23. Although we are strongly opposed to the elimination of the Department of Consumer Affairs and the realignment of the professional boards, we will need more time to evaluate the proposed changes in the most open and physically accessible agency to consumers within government itself. We will provide additional comments and substantiate these concerns and others in another letter and at a later date.

**HHS 23 Streamlining Oversight Requirements for Conducting Medical Survey/Audits of Health Plans**

> *"Some health plans in California, however, undergo costly and duplicative routine medical surveys and audits conducted by state and private entities. This results in a duplication of work for and significant cost to some health plans, and is an inefficient use of state government resources."* [1]

We agree in concept that **state** agencies that review the same health plans should coordinate activities to assure the most comprehensive and consistent oversight and to avoid unnecessary duplicative processes. Of course, such consolidation requires comprehensive knowledge of all of the elements being surveyed by the agency(s) performing the review. Although we do not have specific knowledge of the elements of review performed by the Department of Managed Health Care we are familiar with many of the review standards of the Department of Health Services (DHS). It is our impression that the two entities review different aspects of health plan integrity with the DMHC focusing on fiscal

[1] CPR HHS 23, p. 425.

elements and on consumer access to care and the DHS focusing on health and safety requirements. The proposal, in its current form is not specific enough for us to comment on the feasibility of combining such diverse areas of review into a single **state** review process.

However, CNA 's first review of this proposal raises great concern over other recommendations proposed in this section. In particular, we are dismayed by the suggestion that private **national** accreditation agency surveys be substituted for state agency oversight visits to health plans in an effort to reduce the cost of surveys to the state government. We do not believe that **state** review of facilities and health plans that are **licensed by the state** is duplicative or unnecessary. In fact we believe state oversight is critical to the safety of the consumers that are served by and depend upon their state government for the protective surveillance that will reduce the likelihood of avoidable harm when accessing critical healthcare services.

In recent months the General Accounting Office (GAO) reported to Senator Charles E. Grassley, Chairman of the U.S. Senate Committee of Finance and to Congressman Pete Stark (California) Ranking Minority Member on the Subcommittee on Health and on the Committee on Ways and Means regarding one such private national accreditation agency, the Joint Commission of the Accreditation of Healthcare Organizations (JCAHO).

The GAO letter that accompanies that precedes the report explains, "JCAHO sets standards that accredited hospitals must meet and **reports that these standards are more comprehensive than the Medicare** COPs[Conditions of Participation ]".[2] (Emphasis Added) The Department of Health and Human Services Office of the Inspector General reports that it questions "…whether accreditation by JCAHO ensures that hospitals provide adequate care. Specifically, experts have questioned how well JCAHO's hospital accreditation processes identifies deficiencies in hospitals that could jeopardize patient safety and health."

Some examples of the problems founds with the private national accreditation process are summarized from the report and from press accounts as follows:

> "In 2000, CMS removed the deemed status as a Medicare provider of a JCAHO-accredited hospital in California for failure to comply with two [Conditions of Participation], one of which was infection control. The

[2] GAO, *Medicare: CMS Needs Additional Authority to Adequately Oversee Patient Safety in Hospitals,* July 2004, p. 1.

> hospital failed to provide a sanitary environment to avoid sources and transmission of infections and communicable diseases and failed to develop a system for ensuring the sterilization of medical instruments."[3]
>
> " 'For these three years, JCAHO did not detect 81 percent of the serious physical environment deficiencies identified by **state surveyors'**, the GAO report said."[4] (Emphasis added)
>
> "Congress expects the joint commission to be a watchdog," said Sen. Charles E. Grassley, an Iowa Republican and one of the bill's prime sponsors, at a news conference yesterday announcing the legislation, "It looks like the joint commission is instead a lap dog." [5]
>
> Rep. Pete Stark, a California Democrat and leading sponsor of the bill in the House, said later in an interview that the controversy surrounding Maryland General Hospital in Baltimore is an example of how the accreditation system has failed. The hospital drew top grades last year from an accreditation agency as its laboratories were issues hundreds of potentially faulty results of HIV and hepatitis tests to patients, state inspectors later found. The commission was not direct at fault in that instance. The College of American Pathologists inspected the laboratory, and **the commission recognizes those inspections as meeting its standards."**[6] [Emphasis added]

It is ironic but frightening that when things go wrong JCAHO points the finger to another national accreditation entity because JCAHO relied upon another entity's inspection and did not, therefore, perform the inspection themselves. The purpose of surveys, accreditation and surveillance is to **prevent harm** and not just to remedy unsafe conditions after they have inflicted harm on California healthcare consumers. The proposal to eliminate direct state review of health plans based on any private accreditation entity's assertions that its standards exceed those of the state is shortsighted and will cost government and consumers in human suffering and in the additional costs associated with treatment of the avoidable consequences of substandard healthcare services.

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[3] GAO, *Medicare: CMS Needs Additional Authority to Adequately Oversee Patient Safety in Hospitals,* July 2004, p. 15.
[4] Julie Bell, *Hospital accrediting group misses problems, GAO says: Legislation would give U.S. tighter control over the private commission,* The Baltimore Sun, July 21, 2004,
[5] Julie Bell, *Hospital accrediting group misses problems, GAO says: Legislation would give U.S. tighter control over the private commission,* The Baltimore Sun, July 21, 2004,
[6] Julie Bell, *Hospital accrediting group misses problems, GAO says: Legislation would give U.S. tighter control over the private commission,* The Baltimore Sun, July 21, 2004,

Although the report refers specifically to another national accreditation entity, the principle is the same when considering a proposal that would shift **direct surveillance** of health plans and health facilities from the **state** to a private national entity.

Again, thank you for the opportunity for focused input into the CPR HHS recommendations. We look forward to working with the Administration in its attempts to make government accessible and accountable to California consumers.

Sincerely,

Donna Gerber
Director of Government Relations